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* **HIGH COURT OF DELHI AT NEW DELHI**

\+ LPA No.1262/2007

% **Date of Decision: 5th October, 2007**

DELHI TRANSPORT CORPORATION ..... Appellant
Through: Ms.Manisha Tyagi, Advocate

Versus

KISHAN LAL SEHGAL & OTHERS .....Respondents
Through: Nemo

CORAM:

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether reporters of local papers be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

DR. MUKUNDAKAM SHARMA, CJ (Oral)

CM No.13657/2007

Exemption allowed subject to just exceptions.

CM No.13656/2007 (Delay),

By this application the appellant prays for condonation of delay in filing the appeal. On going through the application we find that there is a delay of four days in filing this appeal and the reason for the same has been set out in the application.

For the reason stated in the application, we allow the same and the delay in filing the appeal stands condoned.

Signature Not Verified
Certify that the digital file and physical file have been compared and the digital data is as per the physical file and no page is missing.

The application stands disposed of.

LPA 1262/2007 & CM 13655/2007

1. Challenge in this appeal is to the order dated 7th August, 2007 passed by the learned Single Judge whereby the writ petitions filed by the respondents herein were allowed holding that the respondents are entitled to receive pension.

2. Pursuant to the office order dated 27th November, 1992, issued by the appellant-DTC, the respondents herein, who were employees of the appellant, had opted for the pension scheme within the period of 30 days as prescribed in the office order. The scheme was made effective from 3rd August, 1981 and was made compulsory for all new employees and was also applicable to all the existing employees including those who had retired after 3rd August, 1981.

3. Clause 3 of the aforesaid pension scheme, which is relevant for the purpose of this appeal reads as under:

> "All the existing employees including those retired w.e.f. 3.8.1981 onwards would have the option to opt for the pension scheme or the employees contributory provident fund as at present, within thirty days from the date of issue of this O.O. for the implementation of the pension scheme as approved by the Government of India."

4. On 3rd March, 1993 the appellant notified a voluntary retirement scheme and the respondents No.1 to 3 applied for under the said scheme. They were relieved from their duties on 31st May, 1993, 30th

April, 1993 and 31st May, 1993 respectively. As the said respondents had already opted for pension scheme, they were entitled to pension on retirement and not covered by the Provident Fund Scheme. However as they were not paid pension, in April, 2005 the respondents filed the aforesaid writ petitions praying for grant of pension on which the aforesaid order was passed by the learned Single Judge.

5. The pension scheme was announced on 27th November, 1992, prior to the retirement of the respondents and they had opted for it. Though the respondents availed the voluntary retirement scheme in 1993 and received the employee's share of the provident fund in 1996, but later they approached the appellant for making pension scheme operational in their favour as they had opted for the said scheme and they were ready to return the money received by them along with interest. In the legal notice dated 15th February, 2005 issued by the respondents to the Chairman-cum-Managing Director of the appellant it was stated that the respondents had the apprehension that the appellant may not have implemented the pension scheme and therefore they had accepted the money.

6. On going through the records we find that the facts of this case are identical with the case *DTC v. Vir Bhan* decided by this Bench on 24th May, 2007. In the said case also the employee had availed of the voluntary retirement scheme and was allowed to retire on 31st May,

1993. He had also taken the employer's share of the provident fund. In the said case we have held that though the employee had not opted for the pension scheme within the prescribed period of thirty days, but Clause-9 of the office Order dated 27th November, 1992 was applicable to the employee and the subsequent option exercised by the employee for getting provident fund and gratuity instead of pension scheme should not have been accepted by the DTC. We upheld the order of the learned Single Judge in that case holding that the employee was entitled to pension.

7. We may also refer to the judgment of a Division Bench of this Court in *DTC v. Baijnath Bhargava and others* – LPA No.33/1998 decided on 16th March, 2000 wherein on the question of entitlement to ex gratia amount, the Court recorded the statement of the counsel for the DTC that DTC had decided to not to contest the said issue as it had already started paying pension to all eligible employees having 20 years of service even when they had not refunded the ex gratia amount taken at the time of voluntary retirement scheme. The learned Single Judge has also referred to the same in the impugned judgment in the present case.

8. In view of the delay by the respondents No.1 to 3 in approaching the Court, learned Single Judge has directed that pension shall be payable to them w.e.f. 1st April, 2005 only and the respondents have

been directed to also refund the employer's share/contribution to CPF received with interest at the rates as applicable.

9. In view of the above discussion we find no infirmity in the impugned judgment and order passed by the learned single judge. There is no merit in this appeal and the same is dismissed.

CHIEF JUSTICE

OCTOBER 05, 2007
"V"

SANJIV KHANNA, J

Connected with Cont Case 36/08 ...
for Direction
— release the amount to petitioner